

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)	CHAPTER 11
)	
HARI 108, LLC,)	CASE NO. 21-08044
)	
DEBTOR.)	Hon. Timothy A. Barnes

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Wednesday, June 22, 2022, at 9:00 a.m.**, I will appear before the Honorable Timothy A. Barnes, or any judge sitting in that judge's place, and present the U.S. Trustee's **UNITED STATES TRUSTEE'S MOTION TO CONVERT OR DISMISS CASE PURSUANT TO 11 U.S.C. 1112(b)**, a copy of which is attached.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID for this hearing is 161 329 5276 and the password is 433658. The meeting ID and password can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

/s/ Spencer C. Ezell
Spencer C. Ezell, Trial Attorney
OFFICE OF THE U.S. TRUSTEE
219 S. Dearborn, Room 873
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CERTIFICATE OF SERVICE

I, Spencer C. Ezell, Trial Attorney, certify that on May 26, 2022, I caused to be served copies of the **UNITED STATES TRUSTEE'S MOTION TO CONVERT OR DISMISS CASE PURSUANT TO 11 U.S.C. 1112(b)** on the ECF Registrants shown below *via* the Court's Electronic Notice for Registrants and *via* First Class US Mail by BMC Group on all other entities shown at the addresses listed below. A supplement to this Certificate of Service from BMC Group will be filed.

/s/ Spencer C. Ezell

SERVICE LIST

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***SEE FOLLOWING FIRST CLASS MAIL SERVICE LIST
(CONTINUED ON NEXT PAGE)***

Label Matrix for local noticing
0752-1

HARI 198, LLC
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Document Page 3 of 9

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Case 21-08044
Northern District of Illinois
Eastern Division
Thu May 26 09:53:49 CDT 2022

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Document Page 5 of 9

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

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Wilmington, DE 19801

Department of the Treasury
Internal Revenue Service
230 S Dearborn St Stop 5014-CHI
Chicago IL 60604

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Associated Wholesale Grocers, Inc.

(d)MBH Investments, LLC
953 N PLUM GROVE RD UNIT B
Schaumburg, IL 60173-4783

End of Label Matrix	
Mailable recipients	62
Bypassed recipients	2
Total	64

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)	CHAPTER 11
)	
HARI 108, LLC,)	CASE NO. 21-08044
)	
DEBTOR.)	Hon. Timothy A. Barnes

U.S. TRUSTEE’S MOTION TO CONVERT OR DISMISS CHAPTER 11 CASE

Patrick S. Layng, the United States Trustee for the Northern District of Illinois (the “U.S. Trustee”), by and through his attorney, Spencer C. Ezell, hereby moves this Court to enter an order converting or dismissing the above-captioned Chapter 11 case. In support of his motion, the U.S. Trustee states to the Court as follows:

JURISDICTION

1. This is a core proceeding concerning the administration of the estate pursuant to 28 U.S.C. § 157(b)(2)(A) which this Court may hear and determine pursuant to IOP 15(A) and LR 40.3.1 of the United States District Court for the Northern District of Illinois.

2. Venue of this case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Movant is the U.S. Trustee for the Northern District of Illinois and is charged with supervising the administration of bankruptcy cases under 28 U.S.C. § 586(a). The U.S. Trustee makes this request pursuant to 11 U.S.C. § 1112(b)(1).

BACKGROUND

4. HARI 108, LLC (the “Debtor”) initiated this case on June 30, 2021 (the “Petition Date”) by filing a petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is a

small business debtor as defined by Section 101(51D) of the Bankruptcy Code. *See dkt. 1, Line 8.*

5. Since the Petition Date, the Debtor has remained in possession and control of its assets and continues to manage its affairs pursuant to Sections 1107 and 1108 as a debtor-in-possession.

6. The Debtor operates a grocery store in LaSalle, Illinois.

7. Prior to the petition date, the Debtor was a member of the Central Grocers distribution and rebate program. When Central Grocers filed for Chapter 11 bankruptcy, the Debtor lost at least \$248,000 in rebates and members interests.

8. The Debtor filed its Plan of Reorganization (the “Plan”) and Disclose Statement on December 27, 2021. *Dkts. 63, 64.*

9. The Plan and Disclosure Statement were not confirmed.

10. On April 28, 2022, the Debtor filed an Amended Plan of Reorganization (the “Amended Plan”) and Amended Disclosure Statement. *Dkts. 69, 70.*

11. On the same date, the Debtor filed a Motion to Extend Time Confirmation Deadline Pursuant to Section 1129(e) (the “Motion”).

12. The U.S. Trustee objected to the Motion and the Court sustained the U.S. Trustee’s objection and denied the Debtor’s Motion. *Dkts. 72, 76.*

13. For the reasons set forth below, the Debtor is unable to timely confirm a plan of reorganization, which constitutes cause to convert or dismiss this case.

LEGAL ARGUMENT

14. In relevant part, Section 1112(b) of the Bankruptcy Code provides that on the request of a party in interest, and after notice and a hearing, the court shall convert the case to

Chapter 7 or dismiss the case, whichever is in the best interests of creditors of the estate, so long as the movant establishes “cause.” *See* 11 U.S.C. § 1112(b)(1).

15. Section 1112(b)(4) sets forth a list of sixteen grounds that constitute “cause” for conversion or dismissal. *See* 11 U.S.C. § 1112(b)(4)(A)-(P). This list is not exhaustive, and a case may be dismissed or converted for causes other than those specifically identified in Section 1112(b)(4). *See In re Tekena USA, LLC*, 419 B.R. 341, 346 (Bankr. N.D. Ill. 2009); *In Matter of Strug-Division, LLC*, 375 B.R. 445, 448 (Bankr. N.D. Ill. 2007).

16. Subsection (b) of Section 1112 enumerates ten examples of events or conduct that constitute cause, which includes:

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

11 U.S.C. § 1112(b)(4).

17. Section 1121(e)(2) requires a small business debtor to file the plan and disclosure statement no later than 300 days after the petition date. Once a small business debtor files the plan and disclosure statement, it has 45 days thereafter to obtain court confirmation of the plan. *See* 11 U.S.C. § 1129(e).

18. A small business debtor may only extend this deadline by satisfying all three requirements of Section 1121(e)(3). Namely, the Debtor must demonstrate that it is more likely than not that the court will confirm the plan within a reasonable amount of time; the new deadline is imposed at the time the extension is granted; and the order extending the deadline is signed before the existing deadline expires. 11 U.S.C. § 1121(e)(3).

19. A small business debtor cannot reset or create a new 45-day confirmation deadline by filing an amended plan. *See In re Wheelchair Sales & Servs.*, 593 B.R. 321 (Bankr. N.D. Ill. 2018).

20. Upon filing its Plan, the Debtor began its confirmation window, which expired on February 10, 2022. The Court neither confirmed the Plan nor entered a signed order extending the deadline on or before February 10, 2022.

21. Therefore, since the Debtor failed to confirm its Plan or extend the original confirmation deadline, the Debtor cannot get a new 45-day deadline by filing an Amended Plan.

22. Consequently, the Debtor is unable to timely confirm a plan of reorganization, which constitutes “cause” to convert or dismiss this case. *See In re 250 Pixley Rd., LLC*, 2018 Bankr. LEXIS 765, 2018 WL 1381316, *3–4 (Bankr. W.D.N.Y. Mar. 16, 2018) (“There is no longer any possibility that a plan could be confirmed within the time frames established by 11 U.S.C. §§ 1121(e) and 1129(e)—those deadlines have passed.”).

CONCLUSION

23. As a result of the foregoing, the U.S. Trustee requests that this case be converted or dismissed for cause shown.

WHEREFORE, the U.S. Trustee respectfully asks this Court for an order converting or dismissing this Chapter 11 case, and for such other relief as this Court deems just.

RESPECTFULLY SUBMITTED:

PATRICK S. LAYNG
UNITED STATES TRUSTEE

DATED: May 26, 2022

/s/Spencer C. Ezell,
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